

1 Charter?

2 THE WITNESS: Sorry, at Charter.

3 MR. PHILLIPS: I haven't asked you
4 about that. But let's just stay in it for a
5 second. When you tried to take the Golf
6 Channel -- you had thought about reducing the
7 subscription levels of the Golf Channel while
8 you were at Charter, did you not, sir?

9 THE WITNESS: It was part of a
10 negotiation. And when we started that
11 negotiation, and Comcast started messaging to
12 the consumers, I was amazed at the level of
13 consumer backlash for any indication that we
14 might move the Golf or Versus Channels.

15 I got hundreds of thousands of
16 phone calls and thousands of emails, such then
17 when I actually did lead the renewals for the
18 Comcast Networks Charter starting a year ago,
19 and those networks are well established at the
20 expanded basic tier.

21 The question in the current
22 negotiation is not "Should the be

1 repositioned?" The only question is "What are
2 the rate increases?" They're very well
3 established on those tiers.

4 Q Sir, when that was happening,
5 Comcast -- the Golf Channel ran a little
6 message on its screen, did it not, sir?

7 A It did.

8 Q Can you tell me what that message
9 said?

10 A I don't recall.

11 Q It said something like "Call your
12 cable company, don't let them take the Golf
13 Channel away." Would that be fair?

14 A Correct.

15 Q And that ran on all the screens of
16 all the consumers, didn't it?

17 A From time to time, yes.

18 Q Does the Tennis Channel ever run
19 anything like that?

20 A No, but I wouldn't have actually
21 expected --

22 Q Thank you, sir.

1 A -- that kind of a response.

2 Q And sir, can you tell me, did you
3 like it when the Golf Channel ran that and you
4 were in charge of distribution at Charter?

5 A No.

6 Q Let me ask -- may I approach, Your
7 Honor?

8 JUDGE SIPPEL: Yes. State the
9 purpose while you're walking.

10 MR. PHILLIPS: That's a good
11 question, Your Honor. I'd like to show the
12 witness an exhibit. And this has previously
13 been marked, and I think received into
14 evidence, as Tennis Channel Exhibit 38.

15 JUDGE SIPPEL: Okay. Thank you.
16 Before I forget, I want to ask a logistical
17 question. But on this exhibit, Comcast 120,
18 as best I was able to determine from a
19 preliminary look, and Mr. Carroll more or less
20 confirmed this, there is a redact on the last
21 page, a considerable redact on the last page.
22 And I don't see a redact any other place in

1 the document.

2 MR. CARROLL: Your Honor, I think
3 the lawyers need to confer and make sure
4 there's no numbers that need to be redacted.
5 And we will do that --

6 JUDGE SIPPEL: So that's fine.

7 MR. CARROLL: -- expeditiously.

8 JUDGE SIPPEL: My only question
9 was -- okay, that answers my question, I
10 guess. And I was wondering why there would be
11 the highly confidential information left on
12 the first page if the redacting had already
13 been done.

14 MR. CARROLL: I'm not --

15 JUDGE SIPPEL: But obviously it
16 has to be checked to see --

17 MR. CARROLL: I'm anxious, and I
18 want to confirm that it's correct. I don't
19 think it will be a big deal to just make sure
20 that there are no numbers, and then we'll --

21 JUDGE SIPPEL: Well, don't rush
22 it. We'll take it up tomorrow.

1 MR. SCHMIDT: Actually, I think
2 it's broader than that, in the sense that
3 these are some of the most sensitive documents
4 that the company has, these contracts, in
5 terms of the terms in the contracts.

6 JUDGE SIPPEL: Yes.

7 MR. SCHMIDT: To me, the better
8 course is to keep the whole document highly
9 confidential. If we need to go through it --
10 it's going to be a lot more extensive than the
11 redactions, but I think these core contract
12 documents, I suspect Comcast would feel the
13 same way about the Golf and Versus affiliation
14 agreements.

15 They're just some of the most
16 sensitive documents from a competitive point
17 of view that exist within the companies. And
18 really, in many ways, the reason why we had
19 this highly confidential process in the first
20 instance.

21 MR. PHILLIPS: And if I may, Your
22 Honor, in addition to that, it also implicates

1 third party rights. I mean, it's not just the
2 fact that it's -- it's not just between the
3 two of us.

4 We'd also have to get the consent,
5 in this instance, of Charter, in order to make
6 that document public. And Mr. Rigdon is no
7 longer there, so we can't count on him to do
8 it.

9 JUDGE SIPPEL: Oh, I see. At
10 Charter -- Charter is identified down on the
11 first page. All right. So basically, the
12 position of both parties is that this stays
13 out of the public record in toto.

14 MR. CARROLL: I don't disagree
15 with that, Your Honor. I think that's a --
16 Mr. Schmidt's made a fair point. It is
17 sensitive commercial information for the
18 purpose -- for the reason that, if the world
19 knew what one party's contract terms were
20 precisely, it would affect -- it could affect
21 negotiations with other parties who otherwise
22 would not have that type of information.

1 JUDGE SIPPEL: All right.

2 MR. CARROLL: Thank you.

3 JUDGE SIPPEL: Thank you. At
4 least that clarifies it. Thank you.

5 MR. CARROLL: Thank you for
6 following up.

7 JUDGE SIPPEL: There we go.

8 MR. PHILLIPS: Mr. Rigdon, I have
9 put before you Exhibit Tennis Channel 38,
10 which is a Comcast document. The first page
11 is an email between two Comcast Employees, and
12 the second page is an exhibit that says
13 "Charter and Comcast, Charter Negotiations
14 June 18th, 2007."

15 And what's followed by that looks
16 like some sort of analysis or slide deck.
17 Have you seen this document before?

18 THE WITNESS: I have.

19 BY MR. PHILLIPS:

20 Q And was this something that was
21 presented to you or developed with you when
22 you were at Charter?

1 A No.

2 Q Oh, have you seen it only in
3 connection with this litigation?

4 A Correct.

5 Q Okay. Well, I'd like to turn you
6 first to page 5 of this document.

7 JUDGE SIPPEL: Again, this is
8 Exhibit 38, Tennis 38, page 5.

9 MR. PHILLIPS: And I am going to
10 just note that this page is discussing a
11 proposed deal where the Golf Channel and
12 Versus were having neg repo. Do you see that?

13 THE WITNESS: I do.

14 BY MR. PHILLIPS:

15 Q Is your interpretation of that
16 that that's negative repositioning?

17 A It is.

18 Q And that means that, in fact, it's
19 not going to be more broadly distributed, that
20 distribution is being narrowed. Correct, sir?

21 A Correct.

22 Q And this reflects the time that

1 you were considering narrowing the
2 distribution there, that we talked about a
3 second ago?

4 A It does.

5 Q And one of the things that Comcast
6 told you at the time, if I can ask you to turn
7 to page 7 -- and I'm just looking at that,
8 where it says -- you see under the second
9 bullet it says [REDACTED]

10 A I see it.

11 Q [REDACTED] -- nets
12 means networks, doesn't it, sir?

13 A That's accurate.

14 Q And that refers to the Golf
15 Channel and Versus, is what you're referring
16 to here, doesn't it?

17 A I'm not referring to it, but --

18 Q But that's what this document's
19 referring to, that's your understanding?

20 A That is my understanding.

21 Q Okay. And then it goes on to say
22 [REDACTED]

1 [REDACTED] Do you see that, sir?

2 A I do.

3 Q And this was a concern that, in
4 fact, Comcast had expressed to you about the
5 proposal to narrow the distribution of Golf
6 and Versus. Is that correct, sir?

7 A That is correct.

8 Q And you agreed that this was a
9 concern, didn't you, sir?

10 A In my position at Charter, I'm not
11 sure that that was something that I was
12 worried about.

13 Q But you -- well, let's go back to
14 your deposition again. And I'm going to ask
15 you this time to turn to page 114. And my
16 colleague, Ms. Pogoriler, was -- actually,
17 turn to 113. The question starts the page
18 before.

19 A Okay.

20 Q And I'm going to start line 21,
21 and this is when my colleague was asking you
22 about this very same document. Do you recall

1 that?

2 A I do.

3 Q And she says "I'm going to turn to
4 the page ending 52319. There's a bullet here
5 which appears to be Benefits and Risk to
6 Comcast of the Proposed Deal, and this is in
7 the benefit category. [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED] [REDACTED]

11 [REDACTED] And you
12 answered "Sure, yes."

13 And she asked, Question, [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 Do you see that question, sir?

17 A I do.

18 Q And you answered "Any time a
19 programmer gives a concession to a distributor
20 that's visible, such as retiering rights, it's
21 going to be used by my colleagues at the other
22 distributors in that negotiation as something

1 that they want."

2 Do you see that, sir?

3 A I do.

4 Q You gave that testimony, didn't
5 you, sir?

6 A I did.

7 Q And you were telling the truth
8 when you gave that testimony, weren't you,
9 sir?

10 A Sure.

11 Q Your Honor, I don't have any
12 further questions. Thank you.

13 MR. OSHINSKY: We have no
14 questions, Your Honor.

15 JUDGE SIPPEL: Redirect?

16 MR. CARROLL: The briefest. If I
17 may, Your Honor?

18 JUDGE SIPPEL: Please.

19 REDIRECT EXAMINATION

20 MR. CARROLL: Mr. Phillips asked
21 you some questions about your experience at
22 Charter in connection with a situation where

1 there was a possibility that -- was it Golf
2 Channel? -- would no longer appear on a broad
3 distribution. Is that what the reference was?

4 THE WITNESS: Correct.

5 BY MR. CARROLL

6 Q And I just want to be clear. It's
7 not clear to me the record was clear on this.
8 And that happened while you were at Charter.
9 And did it happen in connection with your
10 negotiations with Golf Network?

11 A In 2007, yes.

12 Q 2007?

13 A Yes.

14 Q And what happened was that Golf
15 Channel ran -- what's the word for that bar
16 that appears on the TV at the bottom
17 sometimes?

18 A The term of art is a crawl

19 JUDGE SIPPEL: A what?

20 THE WITNESS: A crawl. It's --

21 JUDGE SIPPEL: C-R-A-W-L?

22 THE WITNESS: Yes. It's text that

1 crawls across the bottom of the screen. Like
2 a weather warning, for example, is a crawl.

3 JUDGE SIPPEL: But those are
4 usually on the top of the screen.

5 THE WITNESS: Fair point.

6 MR. CARROLL: I think we've
7 established one thing. The glossary that we
8 submitted on both sides is wholly deficient.

9 JUDGE SIPPEL: In the world of
10 glossaries, this is really not a qualifier, if
11 there is such a world.

12 MR. CARROLL: So was there a crawl
13 that was run at the bottom of the Golf
14 Channel's screen at that time?

15 THE WITNESS: From time to time,
16 yes.

17 BY MR. CARROLL:

18 Q Okay. And what was it urging
19 people to do?

20 A To contact Charter.

21 Q To do what?

22 A To express their support for the

1 channel.

2 Q And now, the people who see it on
3 their TV screen, they're not compelled to
4 call, right?

5 A Absolutely not.

6 Q Okay. It's up to them whether
7 they get up from out of their chair, go up and
8 make a telephone call, right?

9 A Correct. I didn't expect them to
10 call.

11 Q What happened?

12 A Tons, hundreds of thousands of
13 people called. It was overwhelming our
14 customer call centers.

15 Q And -- it overwhelmed your
16 customer call centers?

17 A Absolutely. The whole company was
18 in a state of panic.

19 Q The whole company being?

20 A Charter.

21 Q All over the possibility that Golf
22 Channel might have been taken off the broad

1 distribution?

2 A Absolutely. My field leadership
3 completely panicked, asked me to get a deal
4 done. Absolutely.

5 Q And how about emails. Were there
6 any emails that were going on?

7 A I personally got hundreds of
8 emails. In fact, I had to call the IT
9 department and have them redirect it into
10 separate folders so that I could continue to
11 work.

12 Q And what was --

13 A We were shocked by the consumer
14 outpouring.

15 Q So what happened? After all that
16 happened, did you go forward and take Golf
17 Channel down off of the broad distribution?

18 A We did not. Absolutely not

19 Q And what was your takeaway from
20 that experience?

21 A Be very, very careful when you
22 reposition or try to take content away from

1 consumers.

2 Q Mr. Phillips asked you some
3 questions about -- and he referenced your
4 deposition for some of this -- about the
5 details of the affiliation agreement you had
6 between Charter and Tennis Channel.

7 Do you remember those questions,
8 generally?

9 A I do.

10 Q "What was the price per
11 subscriber, how many subscribed, what were the
12 details of the transaction?" Do you remember
13 that?

14 A I do.

15 Q Are those contained in the
16 affiliation agreement that we put before you
17 that's marked as Comcast Exhibit 120?

18 A I believe many of them are, yes.

19 Q Okay. Could you put that just in
20 front of you for a second?

21 A Yes.

22 Q And Mr. Phillips also asked you

1 questions at one point about the fact that
2 wasn't the decision with respect to carrying
3 the Tennis Channel at Charter, didn't it
4 happen before you got there? Do you remember
5 those questions?

6 A I do.

7 Q Okay. And I just want to make
8 sure there's no confusion about this. You
9 appeared at Charter about four months after
10 the contract was signed, right?

11 A That is correct.

12 Q Okay. But was there something
13 about the terms of the contract itself that
14 made it an issue for you going forward whether
15 you would be carrying Tennis Channel?

16 A I'm not sure what you mean.

17 Q Did the contract require you to
18 carry Tennis Channel going forward, or did you
19 have some choice in the matter?

20 A Yes, I had plenty of choice in the
21 matter.

22 Q Okay. Could you explain that to

1 his Honor, so it's clear why it was you would
2 be considering this issue while you were
3 there, after the contract had been signed?

4 A I had latitude to carry it on more
5 highly penetrated tiers. I had latitude to
6 delete it where we were carrying it. I had
7 latitude to launch it in markets where we
8 weren't carrying it.

9 So I had a lot of flexibility to
10 manage that relationship.

11 Q And was it in that connection that
12 you were meeting with Tennis Channel people
13 periodically?

14 A That's exactly right.

15 Q And in those meetings, were the
16 Tennis Channel people urging you to give them
17 broader distribution?

18 A Absolutely.

19 Q Sort of similar to this
20 experience, in the sense that Comcast is being
21 urged to give broader distribution?

22 A Without the litigation, yes.

1 Q Okay. Last thing, only to
2 clarify. You can put that to the side.

3 It happened very quickly, and I
4 just want to clear up the record. There was
5 a question about whether your seeking under a
6 deal, if it was done, for broader
7 distribution, whether your position is that it
8 would be for free.

9 Do you remember the word free was
10 used?

11 A I do.

12 Q Could you just follow up and
13 explain what you meant by that? Did you mean
14 that you wouldn't be paying Tennis Channel
15 anything for the programming?

16 A Absolutely not.

17 Q Okay. What did you mean by that?

18 A I meant that for distribution
19 beyond the subscribers that currently receive
20 the Tennis Channel in the sports tier, that
21 Comcast would not incur fees for providing
22 that distribution to those subscribers beyond

1 the sports tier.

2 Q So you would continue to pay the
3 fees you're currently paying.

4 A Correct.

5 Q Your position is just that you
6 should not have to pay additional fees beyond
7 that.

8 A Right. Can I talk numbers here?
9 It might be easier to talk numbers.

10 JUDGE SIPPEL: Is there anybody
11 here that needs to leave?

12 MR. CARROLL: Just one person.
13 Sorry.

14 JUDGE SIPPEL: How long do you
15 think this will take?

16 MR. CARROLL: Not long. One or
17 two minutes?

18 JUDGE SIPPEL: Five minutes. We
19 don't do anything less than five minutes.

20 MR. CARROLL: I'll make it take
21 five minutes.

22 BY MR. CARROLL:

1 Q Okay, you were in the middle of
2 answering.

3 A So we pay, Comcast currently pays
4 Tennis Channel about [REDACTED] million per year to
5 distribute the network to a little over [REDACTED]
6 [REDACTED]. Were any subscribers
7 over the [REDACTED] million, what that free meant was
8 we shouldn't be charged for it. We'll
9 continue to pay the [REDACTED] million with the
10 annual price increases that built into the
11 existing agreement, but any additional
12 distributions would be free.

13 JUDGE SIPPEL: Free to?

14 THE WITNESS: Comcast would not be
15 charged per subscriber fees for any
16 subscribers who receive the network over the
17 [REDACTED] million.

18 JUDGE SIPPEL: That would be
19 during the term of the contract or for that
20 particular year?

21 THE WITNESS: I would argue for
22 the term of the contact.

1 JUDGE SIPPEL: Is that what this -
2 - well, that's to argue. It doesn't
3 necessarily mean what it's going to be.

4 THE WITNESS: It would be a
5 compelling business proposition to incentivize
6 me to carry it outside of this Board which is
7 where I think it should be today.

8 BY MR. CARROLL:

9 Q Let me just follow up on this now.
10 Is it, in terms of industry practice, when
11 channels want to get broader distribution, is
12 it unusual to have an arrangement of the sort
13 you just described?

14 A It is not.

15 Q Explain that.

16 A So in a scenario where the
17 operator is not feeling pressure because of
18 consumer demand to provide additional
19 distribution, the ways that networks get
20 additional distribution is to offer extended
21 free periods, often in combination with launch
22 support which means financial incentives to do

1 it which can be structured as large
2 advertising commitments where the network
3 would buy advertising from the cable operator.
4 It could be a payment per additional
5 subscriber that the network would pay to the
6 cable operator for providing that additional
7 distribution. That's a very common practice.

8 Q Okay, and common -- you say it's
9 common. What's your basis for that? How do
10 you know that's a common practice?

11 A I've negotiated similar types of
12 agreements, but you know, for example, that's
13 how Golf and Versus got a lot of their
14 initial distribution.

15 Q Okay.

16 JUDGE SIPPEL: I hope I am going
17 to see this in the proposed findings. I'm not
18 trying to add on to anything, but this is --
19 I mean obviously, the business dynamics is
20 really quite intense and to get an
21 understanding of it

22 --

1 MR. CARROLL: Yes, Your Honor,
2 that's why we're spending time.

3 JUDGE SIPPEL: I hope to get it
4 before I leave here. You know that.

5 MR. CARROLL: I promise you that
6 the teams on either side will not let you
7 forget this.

8 JUDGE SIPPEL: I will be sorry
9 some day that I said that.

10 (Laughter.)

11 MR. CARROLL: Maybe so. I have no
12 further questions at this time. Thank you,
13 Your Honor.

14 MR. PHILLIPS: I have a couple of
15 just real brief ones.

16 JUDGE SIPPEL: I have one question
17 before you do it and that is this, I've got to
18 get this in the right context. You know,
19 unless I get it in the right form, I'm going
20 to leave that right now.

21 Go ahead, sir.

22 RECROSS EXAMINATION

1 BY MR. PHILLIPS:

2 Q Just a few questions. Mr. Rigdon,
3 at the time that The Golf Channel ran that
4 call and you got all the emails, by the way,
5 first place, did you keep a running number, a
6 count, did you have a report on how many calls
7 and emails you got?

8 A I stopped counting on the emails
9 when it got above 200. On the phone calls, we
10 had regular check ins with our field
11 operations and we got regular tallies.

12 Q And do you recall what that
13 regular tally was?

14 A I remember they were well over
15 100,000 and that was in the space of I believe
16 like 48 to 72 hours.

17 Q Did you suspect that at the time
18 those were running that Comcast had had
19 anything to do with orchestrating that mail
20 and those calls?

21 A You know, one has to be paranoid
22 in negotiations and I did suspect that the